

APPEAL NO. 041234  
FILED JULY 14, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on May 4, 2004. The hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the first, second, and third quarters.

The claimant appealed each and every adverse determination asserting that "he has no ability to work." The file does not contain a response from the respondent (carrier).

DECISION

Affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The SIBs criterion in issue is whether the claimant made a good faith effort to obtain employment commensurate with his ability to work during the qualifying periods for the first, second, and third quarter qualifying periods. The claimant contends that he had no ability to work in any capacity during the first and second quarter qualifying periods and that he made good faith job searches in the third quarter qualifying period.

Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work. Rule 130.102(e) provides in part that, except as provided in subsection (d)(1), (2), (3), and (4) of Rule 130.102, an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts.

The hearing officer considered the evidence and found that the claimant was able to work in some capacity during the relevant qualifying periods and that he did not attempt, in good faith, to obtain employment commensurate with his ability to work during the relevant qualifying periods. The hearing officer determined that during the first and second quarter qualifying periods, the doctor's report dated June 2, 2002 (some 11 months prior to the first quarter qualifying period) did not meet the requirements of Rule 130.102(d)(4) for either the first or second quarter qualifying periods. Although the claimant made some 23 job contacts during the third quarter qualifying period, the hearing officer determined that there was one week during which

the claimant failed to document a job search, and that generally the claimant did not conduct a well structured job search plan to meet the requirements of Rule 130.102(e).

The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Accordingly, the hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **AMERICAN INTERSTATE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**STEVE ROPER  
1616 SOUTH CHESTNUT STREET  
LUFKIN, TEXAS 75901.**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Elaine M. Chaney  
Appeals Judge